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SUBJECT: PRC OFFICIALS DISCUSS IPR PROTECTION AND ANTI-MONOPOLY
COOPERATION WITH FTC COMMISSIONER KOVACIC

REF: A) BEIJING 03115; B) BEIJING 02527

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¶11. (SBU) Summary: China should counter the trend toward "overprotection of IPR" by regulating "IPR transfer" and combating IPR "abuse," a Ministry of Commerce (MOFCOM) official said at a December 9 seminar on Anti-Monopoly Law (AML) enforcement and IPR. Other Chinese officials and judges at the seminar argued for a balance between protecting IPR and preventing IPR "abuse." In December 9-10 meetings with Federal Trade Commission (FTC) Commissioner William Kovacic and FTC International Affairs Director Randy Tritell, officials from MOFCOM, the National Development and Reform Commission (NDRC), and the State Administration of Industry and Commerce (SAIC) welcomed expanded cooperation between U.S. and Chinese antitrust agencies, including regular high-level consultations on policy issues, continuation and expansion of technical assistance programs, and participation in FTC's International Fellows Program. End Summary.

Protect IPR or Prevent IPR Abuse?

¶12. (SBU) At a December 9 seminar on AML Enforcement and IPR at Beijing's University of International Business and Economics, Chinese officials and scholars debated the importance of protecting IPR versus preventing IPR "abuse." Chen Fuli, a MOFCOM Treaty and Law Department official who was recently appointed IPR Attach to the Chinese Embassy in Washington, said that international pressure had led to the "overprotection of IPR" in China. He argued that China should counter this trend by regulating "IPR transfer" and by using the AML to combat unfair competition and IPR "abuse." (Comment: Although Chen did not elaborate on the meaning of "IPR transfer" in this public forum, his comments likely mean that China should encourage domestic firms' acquiring foreign firms' IPR. China's recently announced Indigenous Innovation Catalogue has raised concerns about the possibility of such "IPR transfer." End comment.)

¶13. (SBU) Officials from the Supreme People's Court (SPC), Ministry of Science and Technology, MOFCOM Antimonopoly Bureau, and Ministry of Industry and Information Technology (MIIT) voiced stronger support for IPR protection. SPC Intellectual Property Department Chief Judge Kong Xiangjun argued that IPR protection should take precedence over combating IPR abuse, while his fellow SPC Judge He Zhonglin commented that judges should "use one hand to protect IPR and one hand to fight against IPR abuse." MIIT IPR Center Director Zhao Tianwu argued that China needed stronger IPR protection in

order to promote innovation. Speaking at the seminar, FTC Commissioner Kovacic stressed the complementary nature of U.S. antitrust laws and IPR laws, noting that both sets of laws were aimed at promoting consumer welfare and economic development. He also emphasized the importance of continuous discussions between antitrust enforcement agencies and IPR stakeholders in order to achieve balance between IPR protection and antitrust enforcement.

FTC Discusses MOU with Antitrust Agencies

¶4. (SBU) During December 9-10 meetings with China's three anti-monopoly enforcement agencies, FTC Commissioner William Kovacic outlined FTC views on a proposed MOU between U.S. and Chinese antitrust agencies. Kovacic suggested the MOU should include a plan for regular, high-level consultations on policy issues and the continuation and expansion of training and other forms of technical assistance. He also expressed FTC's interest in enforcement cooperation and information-sharing on individual cases. MOFCOM, NDRC and SAIC officials all welcomed the proposed MOU with FTC and the Department of Justice (DOJ), although SAIC Department of International Cooperation Director General An Qinghu insisted that FTC and DOJ sign separate MOUs with China's three antitrust agencies rather than a general framework agreement signed by all five agencies. NDRC Price Supervision and Inspection Department DDG Chen Zhiqiang welcomed FTC's proposal for a framework MOU signed by all five Chinese and American antitrust enforcement agencies and individual work plans between FTC/DOJ and individual Chinese agencies. MOFCOM Anti-Monopoly Bureau Director General Shang Ming expressed hope that the MOU would be signed in the first half of ¶2010.

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FTC to Host MOFCOM Fellow

¶5. (SBU) Commissioner Kovacic told MOFCOM DG Shang that FTC looked forward to hosting a MOFCOM official for a 3-6 month fellowship in ¶2010. The official may be able to be part of an FTC investigative team that would expose him/her to FTC's investigative procedures and best practices. DG Shang said MOFCOM was in the process of selecting an official to take part in FTC's International Fellows Program. NDRC Price Supervision Department DDG Chen Zhiqiang also expressed interest in sending an NDRC official to FTC to participate in the Fellows Program.

NDRC, MOFCOM, SAIC Working on AML Implementing Regs

¶6. (SBU) NDRC Antimonopoly and Market Supervision Division Director Zhi Shengmin told Commissioner Kovacic December 10 that NDRC hoped to finalize anti-price monopoly regulations by the end of December ¶2009. Zhi also indicated that AML enforcement agencies and the SPC planned to issue judicial interpretations of AML procedural rules during the course of implementing the law. MOFCOM DG Shang indicated that his agency was seeking authorization from the State Council to amend some existing regulations and work on new ones. SAIC Anti-Monopoly Bureau Director General Ning Wanglu reported that SAIC was in the process of drafting implementing guidelines on IP, monopoly agreements, abuse of market dominance, and abuse of administrative power to restrict competition. Ning welcomed U.S. comments on SAIC's draft regulations, although he did not offer to share the aforementioned draft guidelines.

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